

---

**SUBSTITUTE SENATE BILL 6808**

---

**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Economic Development, Trade & Innovation (originally sponsored by Senators Kilmer, Shin, Delvin, and Kastama)

READ FIRST TIME 02/05/10.

1           AN ACT Relating to private infrastructure development; amending RCW  
2 80.04.010, 80.04.110, 80.04.130, 80.04.160, 80.04.250, 80.04.500,  
3 80.28.010, 80.28.020, 80.28.022, 80.28.030, 80.28.040, 80.28.050,  
4 80.28.060, 80.28.070, 80.28.080, 80.28.090, 80.28.100, 80.28.110,  
5 80.28.120, 80.28.130, 80.28.140, 80.28.160, 80.28.170, 80.28.185,  
6 80.28.240, 80.28.270, 80.28.275, 80.28.303, 80.28.306, and 36.94.110;  
7 adding new sections to chapter 80.04 RCW; adding a new section to  
8 chapter 80.28 RCW; and creating a new section.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10           NEW SECTION.   **Sec. 1.** The legislature recognizes the critical  
11 importance of infrastructure to the development of industrial,  
12 commercial, and residential properties and finds that infill  
13 development is often limited by the lack of infrastructure. The  
14 legislature further finds that in many areas, public funding to extend  
15 infrastructure is not available. It is the purpose of this act to  
16 allow private utilities to provide infrastructure needed for economic  
17 development in a manner that minimizes development sprawl.

1       **Sec. 2.** RCW 80.04.010 and 1995 c 243 s 2 are each amended to read  
2 as follows:

3       As used in this title, unless specifically defined otherwise or  
4 unless the context indicates otherwise:

5       (1) "Automatic location identification" means a system by which  
6 information about a caller's location, including the seven-digit number  
7 or ten-digit number used to place a 911 call or a different seven-digit  
8 number or ten-digit number to which a return call can be made from the  
9 public switched network, is forwarded to a public safety answering  
10 point for display.

11       (2) "Automatic number identification" means a system that allows  
12 for the automatic display of the seven-digit or ten-digit number used  
13 to place a 911 call.

14       (3) "Commission" means the utilities and transportation commission.

15       (4) "Commissioner" means one of the members of such commission.

16       (5) "Competitive telecommunications company" means a  
17 telecommunications company which has been classified as such by the  
18 commission pursuant to RCW 80.36.320.

19       (6) "Competitive telecommunications service" means a service which  
20 has been classified as such by the commission pursuant to RCW  
21 80.36.330.

22       (7) "Corporation" includes a corporation, company, association or  
23 joint stock association.

24       (8) "Person" includes an individual, a firm or partnership.

25       (9) "Gas plant" includes all real estate, fixtures and personal  
26 property, owned, leased, controlled, used or to be used for or in  
27 connection with the transmission, distribution, sale or furnishing of  
28 natural gas, or the manufacture, transmission, distribution, sale or  
29 furnishing of other type gas, for light, heat or power.

30       (10) "Gas company" includes every corporation, company,  
31 association, joint stock association, partnership and person, their  
32 lessees, trustees or receiver appointed by any court whatsoever, and  
33 every city or town, owning, controlling, operating or managing any gas  
34 plant within this state.

35       (11) "Electric plant" includes all real estate, fixtures and  
36 personal property operated, owned, used or to be used for or in  
37 connection with or to facilitate the generation, transmission,  
38 distribution, sale or furnishing of electricity for light, heat, or

1 power for hire; and any conduits, ducts or other devices, materials,  
2 apparatus or property for containing, holding or carrying conductors  
3 used or to be used for the transmission of electricity for light, heat  
4 or power.

5 (12) "Electrical company" includes any corporation, company,  
6 association, joint stock association, partnership and person, their  
7 lessees, trustees or receivers appointed by any court whatsoever (other  
8 than a railroad or street railroad company generating electricity  
9 solely for railroad or street railroad purposes or for the use of its  
10 tenants and not for sale to others), and every city or town owning,  
11 operating or managing any electric plant for hire within this state.  
12 "Electrical company" does not include a company or person employing a  
13 cogeneration facility solely for the generation of electricity for its  
14 own use or the use of its tenants or for sale to an electrical company,  
15 state or local public agency, municipal corporation, or quasi municipal  
16 corporation engaged in the sale or distribution of electrical energy,  
17 but not for sale to others, unless such company or person is otherwise  
18 an electrical company.

19 (13) "LATA" means a local access transport area as defined by the  
20 commission in conformance with applicable federal law.

21 (14) "Private telecommunications system" means a telecommunications  
22 system controlled by a person or entity for the sole and exclusive use  
23 of such person, entity, or affiliate thereof, including the provision  
24 of private shared telecommunications services by such person or entity.  
25 "Private telecommunications system" does not include a system offered  
26 for hire, sale, or resale to the general public.

27 (15) "Private shared telecommunications services" includes the  
28 provision of telecommunications and information management services and  
29 equipment within a user group located in discrete private premises in  
30 building complexes, campuses, or high-rise buildings, by a commercial  
31 shared services provider or by a user association, through privately  
32 owned customer premises equipment and associated data processing and  
33 information management services and includes the provision of  
34 connections to the facilities of a local exchange and to interexchange  
35 telecommunications companies.

36 (16) "Private switch automatic location identification service"  
37 means a service that enables automatic location identification to be

1 provided to a public safety answering point for 911 calls originating  
2 from station lines served by a private switch system.

3 (17) "Radio communications service company" includes every  
4 corporation, company, association, joint stock association,  
5 partnership, and person, their lessees, trustees, or receivers  
6 appointed by any court, and every city or town making available  
7 facilities to provide radio communications service, radio paging, or  
8 cellular communications service for hire, sale, or resale.

9 (18) "Telecommunications company" includes every corporation,  
10 company, association, joint stock association, partnership and person,  
11 their lessees, trustees or receivers appointed by any court whatsoever,  
12 and every city or town owning, operating or managing any facilities  
13 used to provide telecommunications for hire, sale, or resale to the  
14 general public within this state.

15 (19) "Noncompetitive telecommunications service" means any service  
16 which has not been classified as competitive by the commission.

17 (20) "Facilities" means lines, conduits, ducts, poles, wires,  
18 cables, cross-arms, receivers, transmitters, instruments, machines,  
19 appliances, instrumentalities and all devices, real estate, easements,  
20 apparatus, property and routes used, operated, owned or controlled by  
21 any telecommunications company to facilitate the provision of  
22 telecommunications service.

23 (21) "Telecommunications" is the transmission of information by  
24 wire, radio, optical cable, electromagnetic, or other similar means.  
25 As used in this definition, "information" means knowledge or  
26 intelligence represented by any form of writing, signs, signals,  
27 pictures, sounds, or any other symbols.

28 (22) "Water system" includes all real estate, easements, fixtures,  
29 personal property, dams, dikes, head gates, weirs, canals, reservoirs,  
30 flumes or other structures or appliances operated, owned, used or to be  
31 used for or in connection with or to facilitate the supply, storage,  
32 distribution, sale, furnishing, diversion, carriage, apportionment or  
33 measurement of water for power, irrigation, reclamation, manufacturing,  
34 municipal, domestic or other beneficial uses for hire.

35 (23)(a) "Water company" includes every corporation, company,  
36 association, joint stock association, partnership and person, their  
37 lessees, trustees or receivers appointed by any court whatsoever, and

1 every city or town owning, controlling, operating, or managing any  
2 water system for hire within this state(~~(+ PROVIDED, That)~~).

3 (b) For purposes of commission jurisdiction (~~(it shall)~~), "water  
4 company" does not include any water system serving less than one  
5 hundred customers where the average annual gross revenue per customer  
6 does not exceed three hundred dollars per year, which revenue figure  
7 may be increased annually by the commission by rule adopted pursuant to  
8 chapter 34.05 RCW to reflect the rate of inflation as determined by the  
9 implicit price deflator of the United States department of commerce(~~(+ AND PROVIDED FURTHER, That such)~~). The measurement of customers or  
10 revenues (~~(shall)~~) under this subsection must include all portions of  
11 water companies having common ownership or control, regardless of  
12 location or corporate designation.

14 (c) "Control" as used (~~(herein shall be)~~) in this subsection is  
15 defined by the commission by rule and (~~(shall)~~) does not include  
16 management by a satellite agency as defined in chapter 70.116 RCW if  
17 the satellite agency is not an owner of the water company.

18 (d) "Water company" also includes, for auditing purposes only,  
19 nonmunicipal water systems which are referred to the commission  
20 pursuant to an administrative order from the department, or the city or  
21 county as provided in RCW 80.04.110. (~~(However,)~~)

22 (e) Water companies exempt from commission regulation (~~(shall be)~~)  
23 are subject to the provisions of chapter 19.86 RCW. A water company  
24 cannot be removed from regulation except with the approval of the  
25 commission. Water companies subject to regulation may petition the  
26 commission for removal from regulation if the number of customers falls  
27 below one hundred or the average annual revenue per customer falls  
28 below three hundred dollars. The commission is authorized to maintain  
29 continued regulation if it finds that the public interest so requires.

30 (24) "Cogeneration facility" means any machinery, equipment,  
31 structure, process, or property, or any part thereof, installed or  
32 acquired for the primary purpose of the sequential generation of  
33 electrical or mechanical power and useful heat from the same primary  
34 energy source or fuel.

35 (25) "Public service company" includes every gas company,  
36 electrical company, telecommunications company, wastewater company, and  
37 water company. Ownership or operation of a cogeneration facility does  
38 not, by itself, make a company or person a public service company.

1        (26) "Local exchange company" means a telecommunications company  
2 providing local exchange telecommunications service.

3        (27) "Department" means the department of health.

4        (~~The term~~) (28) "Service" is used in this title in its broadest  
5 and most inclusive sense.

6        (29)(a) "Wastewater company" means an individual, partnership, or  
7 corporation that installs or operates a system of sewerage as defined  
8 in RCW 36.94.010 that serves one hundred or more customers.

9        (b) For purposes of commission jurisdiction, wastewater company  
10 does not include (i) municipal, county, or other publicly owned  
11 wastewater system or companies that contract with such entities for  
12 wastewater treatment services; or (ii) wastewater companies servicing  
13 customers outside of an urban growth area as defined in RCW 36.70A.030.

14        NEW SECTION. **Sec. 3.** A new section is added to chapter 80.04 RCW  
15 to read as follows:

16        (1) A wastewater company shall not operate a system of sewerage for  
17 compensation without first having obtained from the commission a  
18 certificate declaring that the public convenience and necessity  
19 requires such operation.

20        (2) Issuance of the certificate of public convenience and necessity  
21 must be determined on, but not limited to, the following factors:

22        (a) A comprehensive business plan detailing the design,  
23 construction, operation, and maintenance of the proposed service  
24 system;

25        (b) Demonstration of sufficient financial resources to properly  
26 operate and maintain the proposed system, and to replace and upgrade  
27 capital assets;

28        (c) The need to develop a new stand alone system instead of  
29 connecting to an existing system;

30        (d) A statement of prior experience, if any, in such field by the  
31 petitioner, set out in an affidavit or declaration.

32        (3) The commission may, with or without a hearing, issue  
33 certificates, or for good cause shown refuse to issue them, or issue  
34 them for the partial exercise only of the privilege sought, and may  
35 attach to the exercise of the rights granted such terms and conditions  
36 as, in its judgment, the public convenience and necessity may require.

1 (4) Any right, privilege, certificate held, owned, or obtained by  
2 a wastewater company may be sold, assigned, leased, transferred, or  
3 inherited as other property, only if authorized by the commission.

4 (5) Prior to the commission approving a wastewater company to  
5 provide new service or extend existing service, the wastewater company  
6 must file and continuously maintain in effect, a bond, or equivalent  
7 surety as determined by the commission, with the commission to ensure  
8 that there are sufficient funds to properly design, construct, operate,  
9 and maintain the proposed system, and to replace and upgrade capital  
10 assets as required by federal or state law, department of health, or  
11 department of ecology order or additional connections to the system.

12 (6) For purposes of issuing certificates under this chapter, the  
13 commission may adopt rules to implement this section.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.04 RCW  
15 to read as follows:

16 The commission is authorized and empowered to adopt and issue rules  
17 and regulations establishing fees necessary to recover the actual and  
18 reasonable costs of supervising and regulating wastewater companies.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 80.28 RCW  
20 to read as follows:

21 (1) If the commission determines, after providing notice and  
22 opportunity for a hearing in the manner required for complaints under  
23 RCW 80.04.110, that a wastewater company is unfit to provide wastewater  
24 service on any wastewater system under its ownership, the commission  
25 may order the transfer of any such system or systems to a capable  
26 wastewater company.

27 (2) In determining whether a wastewater company is unfit to provide  
28 wastewater service on a wastewater system, the commission may consider  
29 the company's technical and managerial expertise to operate the  
30 wastewater system, the company's financial soundness and the company's  
31 willingness and ability to make ongoing investments necessary to  
32 maintain compliance with statutory and regulatory standards for the  
33 safety, adequacy, efficiency, and reasonableness of the service  
34 provided.

35 (3) Before ordering the transfer of a wastewater system owned by a

1 wastewater company that is unfit to provide service, the commission  
2 must first determine that:

3 (a) Alternatives to the transfer are impractical or not  
4 economically feasible;

5 (b) The acquiring wastewater company is willing and able to acquire  
6 the wastewater system or systems, financially sound, and has the  
7 technical and managerial expertise to operate the wastewater system or  
8 systems in compliance with applicable statutory and regulatory  
9 standards; and

10 (c) Rates paid by customers served by the acquiring wastewater  
11 company will not increase unreasonably because of the acquisition of  
12 the wastewater system, or because of expenditures that may be necessary  
13 to assure compliance with applicable statutory and regulatory standards  
14 for the safety, adequacy, efficiency, and reasonableness of the service  
15 provided.

16 (4) The sale price for the unfit wastewater company's wastewater  
17 system or systems assets shall be determined by agreement between the  
18 unfit wastewater company and the acquiring capable wastewater company  
19 subject to a finding by the commission that the agreed price is  
20 reasonable. A price is deemed reasonable if it does not exceed the  
21 original cost of plant in service, minus accumulated depreciation,  
22 minus contributions in aid to construction. If the unfit wastewater  
23 company and the acquiring capable wastewater company are unable to  
24 agree on the sale price or the commission finds that the agreed sale  
25 price is not reasonable, the commission may institute a condemnation  
26 proceeding in superior court in the manner provided by chapter 8.04 RCW  
27 to determine the compensation to be paid by the acquiring capable  
28 wastewater company for the failed wastewater system or systems assets.  
29 The commission may prosecute the condemnation action in the name of the  
30 state of Washington, however, compensation shall be paid by, and title  
31 to the property shall vest in, the acquiring capable wastewater  
32 company.

33 (5) The capable wastewater company acquiring an unfit wastewater  
34 company's system or systems shall have the same limited immunity from  
35 liability as wastewater companies assuming substandard systems as set  
36 forth in RCW 80.28.275.

37 (6) The commission must provide copies of the notice required by



1 subsection (1) of this section to the department of health and all  
2 proximate public entities providing wastewater utility service.

3 (7) Any capable wastewater company approved by the commission to  
4 acquire the wastewater system or systems of an unfit wastewater company  
5 shall submit to the commission, for approval, a financial plan,  
6 including a timetable, for bringing the acquired wastewater system  
7 assets into compliance with applicable statutory and regulatory  
8 standards. The capable wastewater company shall also provide a copy of  
9 the plan to the department of health and other state or local agency as  
10 the commission may direct. The commission shall give the department of  
11 health adequate opportunity to comment on the plan and shall consider  
12 any comments submitted in deciding whether or not to approve the plan.

13 **Sec. 6.** RCW 80.04.110 and 1995 c 376 s 12 are each amended to read  
14 as follows:

15 (1)(a) Complaint may be made by the commission of its own motion or  
16 by any person or corporation, chamber of commerce, board of trade, or  
17 any commercial, mercantile, agricultural or manufacturing society, or  
18 any body politic or municipal corporation, or by the public counsel  
19 section of the office of the attorney general, or its successor, by  
20 petition or complaint in writing, setting forth any act or thing done  
21 or omitted to be done by any public service corporation in violation,  
22 or claimed to be in violation, of any provision of law or of any order  
23 or rule of the commission(~~(+PROVIDED, That)~~).

24 (b) No complaint (~~shall~~) may be entertained by the commission  
25 except upon its own motion, as to the reasonableness of the schedule of  
26 the rates or charges of any gas company, electrical company, water  
27 company, wastewater company, or telecommunications company, unless the  
28 same be signed by the mayor, council or commission of the city or town  
29 in which the company complained of is engaged in business, or not less  
30 than twenty-five consumers or purchasers of such gas, electricity,  
31 water, wastewater, or telecommunications service, or at least twenty-  
32 five percent of the consumers or purchasers of the company's service(~~(+  
33 PROVIDED, FURTHER, That)~~).

34 (c) When two or more public service corporations, (meaning to  
35 exclude municipal and other public corporations) are engaged in  
36 competition in any locality or localities in the state, either may make  
37 complaint against the other or others that the rates, charges, rules,

1 regulations or practices of such other or others with or in respect to  
2 which the complainant is in competition, are unreasonable,  
3 unremunerative, discriminatory, illegal, unfair or intending or tending  
4 to oppress the complainant, to stifle competition, or to create or  
5 encourage the creation of monopoly, and upon such complaint or upon  
6 complaint of the commission upon its own motion, the commission (~~shall~~  
7 ~~have~~) has power, after notice and hearing as in other cases, to, by  
8 its order, subject to appeal as in other cases, correct the abuse  
9 complained of by establishing such uniform rates, charges, rules,  
10 regulations or practices in lieu of those complained of, to be observed  
11 by all of such competing public service corporations in the locality or  
12 localities specified as shall be found reasonable, remunerative,  
13 nondiscriminatory, legal, and fair or tending to prevent oppression or  
14 monopoly or to encourage competition, and upon any such hearing it  
15 shall be proper for the commission to take into consideration the  
16 rates, charges, rules, regulations and practices of the public service  
17 corporation or corporations complained of in any other locality or  
18 localities in the state.

19 (2) All matters upon which complaint may be founded may be joined  
20 in one hearing, and no motion (~~shall~~) may be entertained against a  
21 complaint for misjoinder of complaints or grievances or misjoinder of  
22 parties; and in any review of the courts of orders of the commission  
23 the same rule shall apply and pertain with regard to the joinder of  
24 complaints and parties as herein provided(~~(:—PROVIDED,)~~). However,  
25 all grievances to be inquired into (~~shall~~) must be plainly set forth  
26 in the complaint. No complaint (~~shall~~) may be dismissed because of  
27 the absence of direct damage to the complainant.

28 (3) Upon the filing of a complaint, the commission (~~shall~~) must  
29 cause a copy thereof to be served upon the person or corporation  
30 complained of, which shall be accompanied by a notice fixing the time  
31 when and place where a hearing will be had upon such complaint. The  
32 time fixed for such hearing (~~shall~~) may not be less than ten days  
33 after the date of the service of such notice and complaint, excepting  
34 as herein provided. The commission (~~shall~~) must enter its final  
35 order with respect to a complaint filed by any entity or person other  
36 than the commission within ten months from the date of filing of the  
37 complaint, unless the date is extended for cause. Rules of practice  
38 and procedure not otherwise provided for in this title may be

1 prescribed by the commission. Such rules may include the requirement  
2 that a complainant use informal processes before filing a formal  
3 complaint.

4 (4)(a) The commission (~~(shall)~~) must, as appropriate, audit a  
5 nonmunicipal water system upon receipt of an administrative order from  
6 the department, or the city or county in which the water system is  
7 located, finding that the water delivered by a system does not meet  
8 state board of health standards adopted under RCW 43.20.050(2)(a) or  
9 standards adopted under chapters 70.116 and 70.119A RCW, and the  
10 results of the audit (~~(shall)~~) must be provided to the requesting  
11 department, city, or county. However, the number of nonmunicipal water  
12 systems referred to the commission in any one calendar year shall not  
13 exceed twenty percent of the water companies subject to commission  
14 regulation as defined in RCW 80.04.010.

15 (b) Every nonmunicipal water system referred to the commission for  
16 audit under this section shall pay to the commission an audit fee in an  
17 amount, based on the system's twelve-month audited period, equal to the  
18 fee required to be paid by regulated companies under RCW 80.24.010.

19 (5) Any customer or purchaser of service from a water system or  
20 company that is subject to commission regulation may file a complaint  
21 with the commission if he or she has reason to believe that the water  
22 delivered by the system to the customer does not meet state drinking  
23 water standards under chapter 43.20 or 70.116 RCW. The commission  
24 (~~(shall)~~) must investigate such a complaint, and (~~(shall)~~) must request  
25 that the state department of health or local health department of the  
26 county in which the system is located test the water for compliance  
27 with state drinking water standards, and provide the results of such  
28 testing to the commission. The commission may decide not to  
29 investigate the complaint if it determines that the complaint has been  
30 filed in bad faith, or for the purpose of harassment of the water  
31 system or company, or for other reasons has no substantial merit. The  
32 water system or company (~~(shall)~~) may bear the expense for the testing.  
33 After the commission has received the complaint from the customer and  
34 during the pendency of the commission investigation, the water system  
35 or company (~~(shall)~~) may not take any steps to terminate service to the  
36 customer or to collect any amounts alleged to be owed to the company by  
37 the customer. The commission may issue an order or take any other  
38 action to ensure that no such steps are taken by the system or company.

1 The customer may, at the customer's option and expense, obtain a water  
2 quality test by a licensed or otherwise qualified water testing  
3 laboratory, of the water delivered to the customer by the water system  
4 or company, and provide the results of such a test to the commission.  
5 If the commission determines that the water does not meet state  
6 drinking water standards, it (~~shall~~) must exercise its authority over  
7 the system or company as provided in this title, and may, where  
8 appropriate, order a refund to the customer on a pro rata basis for the  
9 substandard water delivered to the customer, and (~~shall~~) must order  
10 reimbursement to the customer for the cost incurred by the customer, if  
11 any, in obtaining a water quality test.

12 **Sec. 7.** RCW 80.04.130 and 2008 c 181 s 401 are each amended to  
13 read as follows:

14 (1) Except as provided in subsection (2) of this section, whenever  
15 any public service company (~~shall~~) must file with the commission any  
16 schedule, classification, rule, or regulation, the effect of which is  
17 to change any rate, charge, rental, or toll theretofore charged, the  
18 commission (~~shall have~~) has power, either upon its own motion or upon  
19 complaint, upon notice, to enter upon a hearing concerning such  
20 proposed change and the reasonableness and justness thereof. Pending  
21 such hearing and the decision thereon, the commission may suspend the  
22 operation of such rate, charge, rental, or toll for a period not  
23 exceeding ten months from the time the same would otherwise go into  
24 effect. After a full hearing, the commission may make such order in  
25 reference thereto as would be provided in a hearing initiated after the  
26 same had become effective.

27 (2)(a) The commission (~~shall~~) may not suspend a tariff that makes  
28 a decrease in a rate, charge, rental, or toll filed by a  
29 telecommunications company pending investigation of the fairness,  
30 justness, and reasonableness of the decrease when the filing does not  
31 contain any offsetting increase to another rate, charge, rental, or  
32 toll and the filing company agrees to not file for an increase to any  
33 rate, charge, rental, or toll to recover the revenue deficit that  
34 results from the decrease for a period of one year.

35 (i) The filing company (~~shall~~) must file with any decrease  
36 sufficient information as the commission by rule may require to  
37 demonstrate the decreased rate, charge, rental, or toll is above the

1 long run incremental cost of the service. A tariff decrease that  
2 results in a rate that is below long run incremental cost, or is  
3 contrary to commission rule or order, or the requirements of this  
4 chapter, (~~shall~~) must be rejected for filing and returned to the  
5 company.

6 (ii) The commission may prescribe a different rate to be effective  
7 on the prospective date stated in its final order after its  
8 investigation, if it concludes based on the record that the originally  
9 filed and effective rate is unjust, unfair, or unreasonable.

10 (b) The commission (~~shall~~) may not suspend a promotional tariff.  
11 For the purposes of this section, "promotional tariff" means a tariff  
12 that, for a period of up to ninety days, waives or reduces charges or  
13 conditions of service for existing or new subscribers for the purpose  
14 of retaining or increasing the number of customers who subscribe to or  
15 use a service.

16 (3) The commission may suspend the initial tariff filing of any  
17 water company or wastewater company removed from and later subject to  
18 commission jurisdiction because of the number of customers or the  
19 average annual gross revenue per customer provisions of RCW 80.04.010.  
20 The commission may allow temporary rates during the suspension period.  
21 These rates (~~shall~~) may not exceed the rates charged when the company  
22 was last regulated. Upon a showing of good cause by the company, the  
23 commission may establish a different level of temporary rates.

24 (4) At any hearing involving any change in any schedule,  
25 classification, rule, or regulation the effect of which is to increase  
26 any rate, charge, rental, or toll theretofore charged, the burden of  
27 proof to show that such increase is just and reasonable (~~shall be~~  
28 ~~upon~~) is on the public service company.

29 (5) The implementation of mandatory local measured  
30 telecommunications service is a major policy change in available  
31 telecommunications service. The commission shall not accept for filing  
32 a price list, nor shall it accept for filing or approve, prior to June  
33 1, 2004, a tariff filed by a telecommunications company which imposes  
34 mandatory local measured service on any customer or class of customers,  
35 except that, upon finding that it is in the public interest, the  
36 commission may accept for filing a price list or it may accept for  
37 filing and approve a tariff that imposes mandatory measured service for  
38 a telecommunications company's extended area service or foreign

1 exchange service. This subsection does not apply to land, air, or  
2 marine mobile service, or to pay telephone service, or to any service  
3 which has been traditionally offered on a measured service basis.

4 (6) The implementation of Washington telephone assistance program  
5 service is a major policy change in available telecommunications  
6 service. The implementation of Washington telephone assistance program  
7 service will aid in achieving the stated goal of universal telephone  
8 service.

9 (7) If a utility claims a sales or use tax exemption on the  
10 pollution control equipment for an electrical generation facility and  
11 abandons the generation facility before the pollution control equipment  
12 is fully depreciated, any tariff filing for a rate increase to recover  
13 abandonment costs for the pollution control equipment (~~shall be~~) is  
14 considered unjust and unreasonable for the purposes of this section.

15 (8) During a state of emergency declared under RCW 43.06.010(12),  
16 the governor may waive or suspend the operation or enforcement of this  
17 section or any portion of this section or under any administrative  
18 rule, and issue any orders to facilitate the operation of state or  
19 local government or to promote and secure the safety and protection of  
20 the civilian population.

21 **Sec. 8.** RCW 80.04.160 and 1961 c 14 s 80.04.160 are each amended  
22 to read as follows:

23 The commission is hereby authorized and empowered to adopt,  
24 promulgate and issue rules and regulations covering the transmission  
25 and delivery of messages and conversations, and the furnishing and  
26 supply of gas, electricity, wastewater, and water, and any and all  
27 services concerning the same, or connected therewith; and generally  
28 such rules as pertain to the comfort and convenience of the public  
29 concerning the subjects treated of in this title. Such rules and  
30 regulations (~~shall~~) must be promulgated and issued by the commission  
31 on its own motion, and (~~shall~~) must be served on the public service  
32 company affected thereby as other orders of the commission are served.  
33 Any public service company affected thereby, and deeming such rules and  
34 regulations, or any of them, improper, unjust, unreasonable, or  
35 contrary to law, may within twenty days from the date of service of  
36 such order upon it file objections thereto with the commission,  
37 specifying the particular grounds of such objections. The commission

1 ((~~shall~~)) must, upon receipt of such objections, fix a time and place  
2 for hearing the same, and after a full hearing may make such changes or  
3 modifications thereto, if any, as the evidence may justify. The  
4 commission ((~~shall have~~)) has, and it is hereby given, power to adopt  
5 rules to govern its proceedings, and to regulate the mode and manner of  
6 all investigations and hearings((~~PROVIDED,~~)). However, no person  
7 desiring to be present at such hearing ((shall)) may be denied  
8 permission. Actions may be instituted to review rules and regulations  
9 promulgated under this section as in the case of orders of the  
10 commission.

11 **Sec. 9.** RCW 80.04.250 and 1991 c 122 s 2 are each amended to read  
12 as follows:

13 (1) The commission ((~~shall have~~)) has power upon complaint or upon  
14 its own motion to ascertain and determine the fair value for rate  
15 making purposes of the property of any public service company used and  
16 useful for service in this state and ((~~shall~~)) must exercise such power  
17 whenever it shall deem such valuation or determination necessary or  
18 proper under any of the provisions of this title. In determining what  
19 property is used and useful for providing electric, gas, wastewater, or  
20 water service, the commission may include the reasonable costs of  
21 construction work in progress to the extent that the commission finds  
22 that inclusion is in the public interest.

23 (2) The commission ((~~shall have~~)) has the power to make  
24 revaluations of the property of any public service company from time to  
25 time.

26 (3) The commission ((~~shall~~)) must, before any hearing is had,  
27 notify the complainants and the public service company concerned of the  
28 time and place of such hearing by giving at least thirty days' written  
29 notice thereof, specifying that at the time and place designated a  
30 hearing will be held for the purpose of ascertaining the value of the  
31 company's property, used and useful as aforesaid, which notice  
32 ((~~shall~~)) must be sufficient to authorize the commission to inquire  
33 into and pass upon the matters designated in this section.

34 **Sec. 10.** RCW 80.04.500 and 1985 c 450 s 13 are each amended to  
35 read as follows:

36 Nothing in this title ((~~shall~~)) authorizes the commission to make

1 or enforce any order affecting rates, tolls, rentals, contracts or  
2 charges or service rendered, or the adequacy or sufficiency of the  
3 facilities, equipment, instrumentalities or buildings, or the  
4 reasonableness of rules or regulations made, furnished, used, supplied  
5 or in force affecting any telecommunications line, gas plant,  
6 electrical plant, wastewater system, or water system owned and operated  
7 by any city or town, or to make or enforce any order relating to the  
8 safety of any telecommunications line, electrical plant or water system  
9 owned and operated by any city or town, but all other provisions  
10 enumerated herein (~~shall~~) apply to public utilities owned by any city  
11 or town.

12 **Sec. 11.** RCW 80.28.010 and 2008 c 299 s 35 are each amended to  
13 read as follows:

14 (1) All charges made, demanded or received by any gas company,  
15 electrical company, wastewater company, or water company for gas,  
16 electricity or water, or for any service rendered or to be rendered in  
17 connection therewith, shall be just, fair, reasonable and sufficient.  
18 Reasonable charges necessary to cover the cost of administering the  
19 collection of voluntary donations for the purposes of supporting the  
20 development and implementation of evergreen community management plans  
21 and ordinances under RCW 80.28.300 (~~shall~~) must be deemed as prudent  
22 and necessary for the operation of a utility.

23 (2) Every gas company, electrical company, wastewater company, and  
24 water company (~~shall~~) must furnish and supply such service,  
25 instrumentalities and facilities as shall be safe, adequate and  
26 efficient, and in all respects just and reasonable.

27 (3) All rules and regulations issued by any gas company, electrical  
28 company, wastewater company, or water company, affecting or pertaining  
29 to the sale or distribution of its product, (~~shall~~) must be just and  
30 reasonable.

31 (4) Utility service for residential space heating shall not be  
32 terminated between November 15 through March 15 if the customer:

33 (a) Notifies the utility of the inability to pay the bill,  
34 including a security deposit. This notice should be provided within  
35 five business days of receiving a payment overdue notice unless there  
36 are extenuating circumstances. If the customer fails to notify the  
37 utility within five business days and service is terminated, the



1 customer can, by paying reconnection charges, if any, and fulfilling  
2 the requirements of this section, receive the protections of this  
3 chapter;

4 (b) Provides self-certification of household income for the prior  
5 twelve months to a grantee of the department of (~~community, trade, and~~  
6 ~~economic development~~) commerce, which administers federally funded  
7 energy assistance programs. The grantee (~~shall~~) must determine that  
8 the household income does not exceed the maximum allowed for  
9 eligibility under the state's plan for low-income energy assistance  
10 under 42 U.S.C. 8624 and (~~shall~~) must provide a dollar figure that is  
11 seven percent of household income. The grantee may verify information  
12 provided in the self-certification;

13 (c) Has applied for home heating assistance from applicable  
14 government and private sector organizations and certifies that any  
15 assistance received will be applied to the current bill and future  
16 utility bills;

17 (d) Has applied for low-income weatherization assistance to the  
18 utility or other appropriate agency if such assistance is available for  
19 the dwelling;

20 (e) Agrees to a payment plan and agrees to maintain the payment  
21 plan. The plan will be designed both to pay the past due bill by the  
22 following October 15<sup>th</sup> and to pay for continued utility service. If  
23 the past due bill is not paid by the following October 15, the customer  
24 (~~shall~~) is not (~~be~~) eligible for protections under this chapter  
25 until the past due bill is paid. The plan (~~shall~~) may not require  
26 monthly payments in excess of seven percent of the customer's monthly  
27 income plus one-twelfth of any arrearage accrued from the date  
28 application is made and thereafter during November 15 through March 15.  
29 A customer may agree to pay a higher percentage during this period, but  
30 shall not be in default unless payment during this period is less than  
31 seven percent of monthly income plus one-twelfth of any arrearage  
32 accrued from the date application is made and thereafter. If  
33 assistance payments are received by the customer subsequent to  
34 implementation of the plan, the customer (~~shall~~) must contact the  
35 utility to reformulate the plan; and

36 (f) Agrees to pay the moneys owed even if he or she moves.

37 (5) The utility shall:

1 (a) Include in any notice that an account is delinquent and that  
2 service may be subject to termination, a description of the customer's  
3 duties in this section;

4 (b) Assist the customer in fulfilling the requirements under this  
5 section;

6 (c) Be authorized to transfer an account to a new residence when a  
7 customer who has established a plan under this section moves from one  
8 residence to another within the same utility service area;

9 (d) Be permitted to disconnect service if the customer fails to  
10 honor the payment program. Utilities may continue to disconnect  
11 service for those practices authorized by law other than for nonpayment  
12 as provided for in this subsection. Customers who qualify for payment  
13 plans under this section who default on their payment plans and are  
14 disconnected can be reconnected and maintain the protections afforded  
15 under this chapter by paying reconnection charges, if any, and by  
16 paying all amounts that would have been due and owing under the terms  
17 of the applicable payment plan, absent default, on the date on which  
18 service is reconnected; and

19 (e) Advise the customer in writing at the time it disconnects  
20 service that it will restore service if the customer contacts the  
21 utility and fulfills the other requirements of this section.

22 (6) A payment plan implemented under this section is consistent  
23 with RCW 80.28.080.

24 (7) Every gas company and electrical company shall offer  
25 residential customers the option of a budget billing or equal payment  
26 plan. The budget billing or equal payment plan shall be offered low-  
27 income customers eligible under the state's plan for low-income energy  
28 assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without  
29 limiting availability to certain months of the year, without regard to  
30 the length of time the customer has occupied the premises, and without  
31 regard to whether the customer is the tenant or owner of the premises  
32 occupied.

33 (8) Every gas company, electrical company, wastewater company, and  
34 water company (~~shall~~) must construct and maintain such facilities in  
35 connection with the manufacture and distribution of its product, or  
36 provision of its services, as will be efficient and safe to its  
37 employees and the public.

1 (9) An agreement between the customer and the utility, whether oral  
2 or written, (~~shall~~) does not waive the protections afforded under  
3 this chapter.

4 (10) In establishing rates or charges for water service, water  
5 companies as defined in RCW 80.04.010 may consider the achievement of  
6 water conservation goals and the discouragement of wasteful water use  
7 practices.

8 **Sec. 12.** RCW 80.28.020 and 1961 c 14 s 80.28.020 are each amended  
9 to read as follows:

10 Whenever the commission shall find, after a hearing had upon its  
11 own motion, or upon complaint, that the rates or charges demanded,  
12 exacted, charged or collected by any gas company, electrical company,  
13 wastewater company, or water company, for gas, electricity, sewerage,  
14 or water, or in connection therewith, or that the rules, regulations,  
15 practices or contracts affecting such rates or charges are unjust,  
16 unreasonable, unjustly discriminatory or unduly preferential, or in any  
17 wise in violation of the provisions of the law, or that such rates or  
18 charges are insufficient to yield a reasonable compensation for the  
19 service rendered, the commission (~~shall~~) must determine the just,  
20 reasonable, or sufficient rates, charges, regulations, practices or  
21 contracts to be thereafter observed and in force, and (~~shall~~) must  
22 fix the same by order.

23 **Sec. 13.** RCW 80.28.022 and 1991 c 150 s 1 are each amended to read  
24 as follows:

25 In determining the rates to be charged by each wastewater company  
26 or water company subject to its jurisdiction, the commission may  
27 provide for the funding of a reserve account exclusively for the  
28 purpose of making capital improvements approved by the department of  
29 health as a part of a long-range plan, or required by the department to  
30 assure compliance with federal or state drinking water regulations, or  
31 to perform construction or maintenance required by the department of  
32 ecology to secure safety to life and property under RCW 43.21A.064(2).  
33 Expenditures from the fund (~~shall be~~) are subject to prior approval  
34 by the commission, and (~~shall~~) must be treated for rate-making  
35 purposes as customer contributions.

1       **Sec. 14.** RCW 80.28.030 and 1989 c 207 s 4 are each amended to read  
2 as follows:

3       (1) Whenever the commission (~~shall~~) finds, after such hearing,  
4 that the illuminating or heating power, purity or pressure of gas, the  
5 efficiency of electric lamp supply, the voltage of the current supplied  
6 for light, heat or power, the quality of wastewater discharge, or the  
7 purity, quality, volume, and pressure of water, supplied by any gas  
8 company, electrical company, wastewater company, or water company, as  
9 the case may be, is insufficient, impure, inadequate or inefficient, it  
10 (~~shall~~) must order such improvement in the manufacture, distribution  
11 or supply of gas, in the manufacture, transmission or supply of  
12 electricity, in the operation of the wastewater facilities, or in the  
13 storage, distribution or supply of water, or in the methods employed by  
14 such gas company, electrical company, wastewater company, or water  
15 company, as will in its judgment be efficient, adequate, just and  
16 reasonable. Failure of a water company to comply with state board of  
17 health standards adopted under RCW 43.20.050(2)(a) or department  
18 standards adopted under chapter 70.116 RCW for purity, volume, and  
19 pressure (~~shall be~~) is prima facie evidence that the water supplied  
20 is insufficient, impure, inadequate, or inefficient.

21       (2) In ordering improvements in the storage, distribution, or  
22 supply of water, or the operations of a wastewater facility, the  
23 commission (~~shall~~) must consult and coordinate with the department.  
24 In the event that a wastewater company or water company fails to comply  
25 with an order of the commission in a timely fashion, the commission may  
26 request that the department petition the court to place the company in  
27 receivership.

28       **Sec. 15.** RCW 80.28.040 and 1989 c 207 s 5 are each amended to read  
29 as follows:

30       (1) Whenever the commission (~~shall~~) finds, after hearing, that  
31 any rules, regulations, measurements or the standard thereof,  
32 practices, acts or services of any such gas company, electrical  
33 company, wastewater company, or water company are unjust, unreasonable,  
34 improper, insufficient, inefficient or inadequate, or that any service  
35 which may be reasonably demanded is not furnished, the commission  
36 (~~shall~~) must fix the reasonable rules, regulations, measurements or

1 the standard thereof, practices, acts or service to be thereafter  
2 furnished, imposed, observed and followed, and (~~shall~~) must fix the  
3 same by order or rule.

4 (2) In ordering improvements to the service of any wastewater  
5 company or water company, the commission (~~shall~~) must consult and  
6 coordinate with the department. In the event that a wastewater company  
7 or water company fails to comply with an order of the commission within  
8 the deadline specified in the order, the commission may request that  
9 the department petition the court to place the company in receivership.

10 **Sec. 16.** RCW 80.28.050 and 1961 c 14 s 80.28.050 are each amended  
11 to read as follows:

12 Every gas company, electrical company, wastewater company, and  
13 water company (~~shall~~) must file with the commission and (~~shall~~)  
14 must print and keep open to public inspection schedules in such form as  
15 the commission may prescribe, showing all rates and charges made,  
16 established or enforced, or to be charged or enforced, all forms of  
17 contract or agreement, all rules and regulations relating to rates,  
18 charges or service, used or to be used, and all general privileges and  
19 facilities granted or allowed by such gas company, electrical company,  
20 wastewater company, or water company.

21 **Sec. 17.** RCW 80.28.060 and 2008 c 181 s 402 are each amended to  
22 read as follows:

23 (1) Unless the commission otherwise orders, no change (~~shall~~) may  
24 be made in any rate or charge or in any form of contract or agreement  
25 or in any rule or regulation relating to any rate, charge or service,  
26 or in any general privilege or facility which shall have been filed and  
27 published by a gas company, electrical company, wastewater company, or  
28 water company in compliance with the requirements of RCW 80.28.050  
29 except after thirty days' notice to the commission and publication for  
30 thirty days, which notice (~~shall~~) must plainly state the changes  
31 proposed to be made in the schedule then in force and the time when the  
32 change will go into effect and all proposed changes (~~shall~~) must be  
33 shown by printing, filing and publishing new schedules, or shall be  
34 plainly indicated upon the schedules in force at the time and kept open  
35 to public inspection. Proposed changes may be suspended by the  
36 commission within thirty days or before the stated effective date of

1 the proposed change, whichever is later. The commission, for good  
2 cause shown, may allow changes without requiring the thirty days'  
3 notice by duly filing, in such manner as it may direct, an order  
4 specifying the changes so to be made and the time when it (~~shall~~)  
5 takes effect. All such changes (~~shall~~) must be immediately indicated  
6 upon its schedules by the company affected. When any change is made in  
7 any rate or charge, form of contract or agreement, or any rule or  
8 regulation relating to any rate or charge or service, or in any general  
9 privilege or facility, the effect of which is to increase any rate or  
10 charge, then in existence, attention (~~shall~~) must be directed on the  
11 copy filed with the commission to such increase by some character  
12 immediately preceding or following the item in such schedule, such  
13 character to be in form as designated by the commission.

14 (2) During a state of emergency declared under RCW 43.06.010(12),  
15 the governor may waive or suspend the operation or enforcement of this  
16 section or any portion of this section or under any administrative  
17 rule, and issue any orders to facilitate the operation of state or  
18 local government or to promote and secure the safety and protection of  
19 the civilian population.

20 **Sec. 18.** RCW 80.28.070 and 1961 c 14 s 80.28.070 are each amended  
21 to read as follows:

22 Nothing in this chapter (~~shall be taken to~~) prohibits a gas  
23 company, electrical company, wastewater company, or water company from  
24 establishing a sliding scale of charges, whereby a greater charge is  
25 made per unit for a lesser than a greater quantity for gas,  
26 electricity, sewerage, or water, or any service rendered or to be  
27 rendered.

28 **Sec. 19.** RCW 80.28.080 and 1985 c 427 s 2 are each amended to read  
29 as follows:

30 (1)(a) Except as provided otherwise in this subsection, no gas  
31 company, electrical company, wastewater company, or water company  
32 (~~shall~~) may charge, demand, collect or receive a greater or less or  
33 different compensation for any service rendered or to be rendered than  
34 the rates and charges applicable to such service as specified in its  
35 schedule filed and in effect at the time, nor (~~shall~~) may any such  
36 company directly or indirectly refund or remit in any manner or by any

1 device any portion of the rates or charges so specified, or furnish its  
2 product at free or reduced rates except to its employees and their  
3 families, and its officers, attorneys, and agents; to hospitals,  
4 charitable and eleemosynary institutions and persons engaged in  
5 charitable and eleemosynary work; to indigent and destitute persons; to  
6 national homes or state homes for disabled volunteer soldiers and  
7 soldiers' and sailors' homes(~~(:—PROVIDED, That the term))~~).

8 For the purposes of this subsection (1):

9 (i) "Employees" (~~(as used in this paragraph shall)~~) includes  
10 furloughed, pensioned and superannuated employees, persons who have  
11 become disabled or infirm in the service of any such company; and (~~the~~  
12 ~~term~~)

13 (ii) "Families(~~(7)~~)" (~~(as used in this paragraph, shall)~~) includes  
14 the families of those persons named in this proviso, the families of  
15 persons killed or dying in the service, also the families of persons  
16 killed, and the surviving spouse prior to remarriage, and the minor  
17 children during minority of persons who died while in the service of  
18 any of the companies named in this (~~paragraph:—PROVIDED FURTHER,~~  
19 ~~That~~) subsection (1).

20 (b) Water companies may furnish free or at reduced rates water for  
21 the use of the state, or for any project in which the state is  
22 interested(~~(:—AND PROVIDED FURTHER, That))~~).

23 (c) Gas companies, electrical companies, wastewater companies, and  
24 water companies may charge the defendant for treble damages awarded in  
25 lawsuits successfully litigated under RCW 80.28.240.

26 (2) No gas company, electrical company, wastewater company, or  
27 water company (~~(shall)~~) may extend to any person or corporation any  
28 form of contract or agreement or any rule or regulation or any  
29 privilege or facility except such as are regularly and uniformly  
30 extended to all persons and corporations under like circumstances.

31 **Sec. 20.** RCW 80.28.090 and 1961 c 14 s 80.28.090 are each amended  
32 to read as follows:

33 No gas company, electrical company, wastewater company, or water  
34 company (~~(shall)~~) may make or grant any undue or unreasonable  
35 preference or advantage to any person, corporation, or locality, or to  
36 any particular description of service in any respect whatsoever, or

1 subject any particular person, corporation or locality or any  
2 particular description of service to any undue or unreasonable  
3 prejudice or disadvantage in any respect whatsoever.

4 **Sec. 21.** RCW 80.28.100 and 1961 c 14 s 80.28.100 are each amended  
5 to read as follows:

6 No gas company, electrical company, wastewater company, or water  
7 company (~~shall~~) may, directly or indirectly, or by any special rate,  
8 rebate, drawback or other device or method, charge, demand, collect or  
9 receive from any person or corporation a greater or less compensation  
10 for gas, electricity, wastewater services, or water, or for any service  
11 rendered or to be rendered, or in connection therewith, except as  
12 authorized in this chapter, than it charges, demands, collects or  
13 receives from any other person or corporation for doing a like or  
14 contemporaneous service with respect thereto under the same or  
15 substantially similar circumstances or conditions.

16 **Sec. 22.** RCW 80.28.110 and 1990 c 132 s 5 are each amended to read  
17 as follows:

18 Every gas company, electrical company, wastewater company, or water  
19 company, engaged in the sale and distribution of gas, electricity or  
20 water or the provision of wastewater services, (~~shall~~) must, upon  
21 reasonable notice, furnish to all persons and corporations who may  
22 apply therefor and be reasonably entitled thereto, suitable facilities  
23 for furnishing and furnish all available gas, electricity, wastewater  
24 services, and water as demanded, except that a water company (~~shall~~)  
25 may not furnish water contrary to the provisions of water system plans  
26 approved under chapter 43.20 or 70.116 RCW.

27 **Sec. 23.** RCW 80.28.120 and 1961 c 14 s 80.28.120 are each amended  
28 to read as follows:

29 Every gas, water, wastewater, or electrical company owning,  
30 operating or managing a plant or system for the distribution and sale  
31 of gas, water or electricity, or the provision of wastewater services  
32 to the public for hire (~~shall be~~) is, and (~~be~~) is held to be, a  
33 public service company as to such plant or system and as to all gas,  
34 water, wastewater services, or electricity distributed or furnished  
35 therefrom, whether such gas, water, wastewater services, or electricity



1 be sold wholesale or retail or be distributed wholly to the general  
2 public or in part as surplus gas, water or electricity to manufacturing  
3 or industrial concerns or to other public service companies or  
4 municipalities for redistribution. Nothing in this title (~~(shall)~~) may  
5 be construed to prevent any gas company, electrical company or water  
6 company from continuing to furnish its product or the use of its lines,  
7 equipment or service under any contract or contracts in force on June  
8 7, 1911, at the rates fixed in such contract or contracts(~~(:—PROVIDED,~~  
9 ~~That)~~). However, the commission (~~(shall—have)~~) has power, in its  
10 discretion, to direct by order that such contract or contracts  
11 (~~(shall)~~) must be terminated by the company party thereto and thereupon  
12 such contract or contracts (~~(shall)~~) must be terminated by such company  
13 as and when directed by such order.

14 **Sec. 24.** RCW 80.28.130 and 1961 c 14 s 80.28.130 are each amended  
15 to read as follows:

16 Whenever the commission (~~(shall)~~) finds, after hearing had upon its  
17 own motion or upon complaint, that repairs or improvements, to, or  
18 changes in, any gas plant, electrical plant, wastewater facility, or  
19 water system ought to be made, or that any additions or extensions  
20 should reasonably be made thereto, in order to promote the security or  
21 convenience of the public or employees, or in order to secure adequate  
22 service or facilities for manufacturing, distributing or supplying gas,  
23 electricity, wastewater services, or water, the commission may enter an  
24 order directing that such reasonable repairs, improvements, changes,  
25 additions or extensions of such gas plant, electrical plant, wastewater  
26 facility, or water system be made.

27 **Sec. 25.** RCW 80.28.140 and 1961 c 14 s 80.28.140 are each amended  
28 to read as follows:

29 (1) The commission may appoint inspectors of wastewater measuring  
30 devices and gas and water meters whose duty it (~~(shall—be)~~) is when  
31 required by the commission to inspect, examine, prove and ascertain the  
32 accuracy of any and all wastewater measuring devices and gas and water  
33 meters used or intended to be used for measuring or ascertaining the  
34 flow or volume of wastewater, the quantity of gas for light, heat or  
35 power, or the quantity of water furnished for any purpose by any public  
36 service company to or for the use of any person or corporation, and

1 when found to be or made to be correct such inspectors (~~shall~~) must  
2 seal all such devices or meters and each of them with some suitable  
3 device to be prescribed by the commission.

4 (2) No public service company (~~shall~~) may thereafter furnish, set  
5 or put in use any wastewater measurement device or gas or water meter  
6 (~~which shall not have~~) that has not been inspected, proved and sealed  
7 by an inspector of the commission under such rules and regulations as  
8 the commission may prescribe.

9 **Sec. 26.** RCW 80.28.160 and 1961 c 14 s 80.28.160 are each amended  
10 to read as follows:

11 Every gas company, electrical company, wastewater company, and  
12 water company (~~shall~~) must prepare and maintain such suitable  
13 premises, apparatus and facilities as may be required and approved by  
14 the commission for testing and proving the accuracy of gas, electric or  
15 water meters, or wastewater measurement devices furnished for use by it  
16 by which apparatus every meter or device may be tested.

17 **Sec. 27.** RCW 80.28.170 and 1961 c 14 s 80.28.170 are each amended  
18 to read as follows:

19 If any consumer to whom a meter or measurement device has been  
20 furnished (~~shall~~) requests the commission in writing to inspect such  
21 meter or device, the commission (~~shall~~) must have the same inspected  
22 and tested, and if the same, on being so tested, (~~shall be~~) is found  
23 to be more than four percent if an electric meter, or more than two  
24 percent if a gas meter, or more than two percent if a wastewater  
25 measurement device or more than two percent if a water meter, defective  
26 or incorrect to the prejudice of the consumer, the expense of such  
27 inspection and test (~~shall~~) must be borne by the gas company,  
28 electrical company, wastewater company, or water company, and if the  
29 same, on being so tested (~~shall be~~) is found to be correct within the  
30 limits of error prescribed by the provisions of this section, the  
31 expense of such inspection and test (~~shall~~) must be borne by the  
32 consumer.

33 **Sec. 28.** RCW 80.28.185 and 1989 c 207 s 6 are each amended to read  
34 as follows:

35 The commission may develop and enter into an agreement with a

1 county to carry out the regulatory functions of this chapter with  
2 regard to water companies or wastewater companies located within the  
3 boundary of that county. The duration of the agreement, the duties to  
4 be performed, and the remuneration to be paid by the commission are  
5 subject to agreement by the commission and the county.

6 **Sec. 29.** RCW 80.28.240 and 1989 c 11 s 30 are each amended to read  
7 as follows:

8 (1) A utility may bring a civil action for damages against any  
9 person who commits, authorizes, solicits, aids, abets, or attempts to:

10 (a) Divert, or cause to be diverted, utility services by any means  
11 whatsoever;

12 (b) Make, or cause to be made, any connection or reconnection with  
13 property owned or used by the utility to provide utility service  
14 without the authorization or consent of the utility;

15 (c) Prevent any utility meter or other device used in determining  
16 the charge for utility services from accurately performing its  
17 measuring function by tampering or by any other means;

18 (d) Tamper with any property owned or used by the utility to  
19 provide utility services; or

20 (e) Use or receive the direct benefit of all or a portion of the  
21 utility service with knowledge of, or reason to believe that, the  
22 diversion, tampering, or unauthorized connection existed at the time of  
23 the use or that the use or receipt was without the authorization or  
24 consent of the utility.

25 (2) In any civil action brought under this section, the utility may  
26 recover from the defendant as damages three times the amount of actual  
27 damages, if any, plus the cost of the suit and reasonable attorney's  
28 fees, plus the costs incurred on account of the bypassing, tampering,  
29 or unauthorized reconnection, including but not limited to costs and  
30 expenses for investigation, disconnection, reconnection, service calls,  
31 and expert witnesses.

32 (3) Any damages recovered under this section in excess of the  
33 actual damages sustained by the utility may be taken into account by  
34 the utilities and transportation commission or other applicable rate-  
35 making agency in establishing utility rates.

36 (4) As used in this section:

- 1 (a) "Customer" means the person in whose name a utility service is  
2 provided;
- 3 (b) "Divert" means to change the intended course or path of  
4 electricity, gas, or water without the authorization or consent of the  
5 utility;
- 6 (c) "Person" means any individual, partnership, firm, association,  
7 or corporation or government agency;
- 8 (d) "Reconnection" means the commencement of utility service to a  
9 customer or other person after service has been lawfully disconnected  
10 by the utility;
- 11 (e) "Tamper" means to rearrange, injure, alter, interfere with, or  
12 otherwise prevent from performing the normal or customary function;
- 13 (f) "Utility" means any electrical company, gas company, wastewater  
14 company, or water company as those terms are defined in RCW 80.04.010,  
15 and includes any electrical, gas, or water system operated by any  
16 public agency; and
- 17 (g) "Utility service" means the provision of electricity, gas,  
18 water, or any other service or commodity furnished by the utility for  
19 compensation.

20 **Sec. 30.** RCW 80.28.270 and 1991 c 101 s 2 are each amended to read  
21 as follows:

22 The commission's jurisdiction over the rates, charges, practices,  
23 acts or services of any water company (~~shall~~) or wastewater company  
24 include any aspect of line extension, service installation, or service  
25 connection. If the charges for such services are not set forth by  
26 specific amount in the company's tariff filed with the commission  
27 pursuant to RCW 80.28.050, the commission (~~shall~~) must determine the  
28 fair, just, reasonable, and sufficient charge for such extension,  
29 installation, or connection. In any such proceeding in which there is  
30 no specified tariffed rate, the burden (~~shall be~~) is on the company  
31 to prove that its proposed charges are fair, just, reasonable, and  
32 sufficient.

33 **Sec. 31.** RCW 80.28.275 and 1994 c 292 s 9 are each amended to read  
34 as follows:

35 A water company or a wastewater company assuming responsibility for  
36 a water or wastewater system that is not in compliance with state or

1 federal requirements for public drinking water systems, and its agents  
2 and employees, are immune from lawsuits or causes of action, based on  
3 noncompliance with state or federal requirements for public drinking  
4 water systems, which predate the date of assuming responsibility and  
5 continue after the date of assuming responsibility, provided that the  
6 water company or wastewater company has submitted and is complying with  
7 a plan and schedule of improvements approved by the department of  
8 health. This immunity (~~shall~~) expires on the earlier of the date the  
9 plan of improvements is completed or four years from the date of  
10 assuming responsibility. This immunity does not apply to intentional  
11 injuries, fraud, or bad faith.

12 **Sec. 32.** RCW 80.28.303 and 1994 c 268 s 2 are each amended to read  
13 as follows:

14 (1) An electrical, gas, wastewater, or water company may file a  
15 conservation service tariff with the commission. The tariff (~~shall~~)  
16 must provide:

17 (a) The terms and conditions upon which the company will offer the  
18 conservation measures and services specified in the tariff;

19 (b) The period of time during which the conservation measures and  
20 services will be offered; and

21 (c) The maximum amount of expenditures to be made during a  
22 specified time period by the company on conservation measures and  
23 services specified in the tariff.

24 (2) The commission has the same authority with respect to a  
25 proposed conservation service tariff as it has with regard to any other  
26 schedule or classification the effect of which is to change any rate or  
27 charge, including, without limitation, the power granted by RCW  
28 80.04.130 to conduct a hearing concerning a proposed conservation  
29 service tariff and the reasonableness and justness thereof, and pending  
30 such hearing and the decision thereon the commission may suspend the  
31 operation of the tariff for a period not exceeding ten months from the  
32 time the tariff would otherwise go into effect.

33 (3) An electrical, gas, wastewater, or water company may from time  
34 to time apply to the commission for a determination that specific  
35 expenditures may under its tariff constitute bondable conservation  
36 investment. A company may request this determination by the commission  
37 in separate proceedings for this purpose or in connection with a

1 general rate case. The commission may designate the expenditures as  
2 bondable conservation investment as defined in RCW 80.28.005(1) if it  
3 finds that such designation is in the public interest.

4 (4) The commission (~~(shall)~~) must include in rate base all bondable  
5 conservation investment. The commission (~~(shall)~~) must approve rates  
6 for service by electrical, gas, wastewater, and water companies at  
7 levels sufficient to recover all of the expenditures of the bondable  
8 conservation investment included in rate base and the costs of equity  
9 and debt capital associated therewith, including, without limitation,  
10 the payment of principal, premium, if any, and interest on conservation  
11 bonds. The rates so determined may be included in general rate  
12 schedules or may be expressed in one or more separate rate schedules.  
13 The commission (~~(shall)~~) may not revalue bondable conservation  
14 investment for rate-making purposes, to determine that revenues  
15 required to recover bondable conservation investment and associated  
16 equity and debt capital costs are unjust, unreasonable, or in any way  
17 impair or reduce the value of conservation investment assets or that  
18 would impair the timing or the amount of revenues arising with respect  
19 to conservation investment assets that have been pledged to secure  
20 conservation bonds.

21 (5) Nothing in this chapter precludes the commission from adopting  
22 or continuing other conservation policies and programs intended to  
23 provide incentives for and to encourage utility investment in improving  
24 the efficiency of energy or water end use. However, the policies or  
25 programs shall not impair conservation investment assets. This chapter  
26 is not intended to be an exclusive or mandatory approach to  
27 conservation programs for electrical, gas, wastewater, and water  
28 companies, and no such company is obligated to file conservation  
29 service tariffs under this chapter, to apply to the commission for a  
30 determination that conservation costs constitute bondable conservation  
31 investment within the meaning of this chapter, or to issue conservation  
32 bonds.

33 (6)(a) If a customer of an electrical, gas, wastewater, or water  
34 company for whose benefit the company made expenditures for  
35 conservation measures or services ceases to be a customer of such  
36 company for one or more of the following reasons, the commission may  
37 require that the portion of such conservation expenditures that had

1 been included in rate base but not theretofore recovered in the rates  
2 of such company be removed from the rate base of the company:

3 (i) The customer ceases to be a customer of the supplier of energy,  
4 wastewater services, or water, and the customer repays to the company  
5 the portion of the conservation expenditures made for the benefit of  
6 such customer that has not theretofore been recovered in rates of the  
7 company; or

8 (ii) The company sells its property used to serve such customer and  
9 the customer ceases to be a customer of the company as a result of such  
10 action.

11 (b) An electrical, gas, wastewater, or water company may include in  
12 a contract for a conservation measure or service, and the commission  
13 may by rule or order require to be included in such contracts, a  
14 provision requiring that, if the customer ceases to be a customer of  
15 that supplier of energy or water or wastewater services, the customer  
16 (~~shall~~) must repay to the company the portion of the conservation  
17 expenditures made for the benefit of such customer that has not  
18 theretofore been recovered in rates of the company.

19 **Sec. 33.** RCW 80.28.306 and 1994 c 268 s 3 are each amended to read  
20 as follows:

21 (1) Electrical, gas, wastewater, and water companies, or finance  
22 subsidiaries, may issue conservation bonds upon approval by the  
23 commission.

24 (2) Electrical, gas, wastewater, and water companies, or finance  
25 subsidiaries may pledge conservation investment assets as collateral  
26 for conservation bonds by obtaining an order of the commission  
27 approving an issue of conservation bonds and providing for a security  
28 interest in conservation investment assets. A security interest in  
29 conservation investment assets is created and perfected only upon entry  
30 of an order by the commission approving a contract governing the  
31 granting of the security interest and the filing with the department of  
32 licensing of a UCC-1 financing statement, showing such pledgor as  
33 "debtor" and identifying such conservation investment assets and the  
34 bondable conservation investment associated therewith. The security  
35 interest is enforceable against the debtor and all third parties,  
36 subject to the rights of any third parties holding security interests  
37 in the conservation investment assets perfected in the manner described

1 in this section, if value has been given by the purchasers of  
2 conservation bonds. An approved security interest in conservation  
3 investment assets is a continuously perfected security interest in all  
4 revenues and proceeds arising with respect to the associated bondable  
5 conservation investment, whether or not such revenues have accrued.  
6 Upon such approval, the priority of such security interest (~~shall~~)  
7 must be as set forth in the contract governing the conservation bonds.  
8 Conservation investment assets constitute property for the purposes of  
9 contracts securing conservation bonds whether or not the related  
10 revenues have accrued.

11 (3) The relative priority of a security interest created under this  
12 section is not defeated or adversely affected by the commingling of  
13 revenues arising with respect to conservation investment assets with  
14 other funds of the debtor. The holders of conservation bonds (~~shall~~)  
15 have a perfected security interest in all cash and deposit accounts of  
16 the debtor in which revenues arising with respect to conservation  
17 investment assets pledged to such holders have been commingled with  
18 other funds, but such perfected security interest is limited to an  
19 amount not greater than the amount of such revenues received by the  
20 debtor within twelve months before (a) any default under the  
21 conservation bonds held by the holders or (b) the institution of  
22 insolvency proceedings by or against the debtor, less payments from  
23 such revenues to the holders during such twelve-month period. If an  
24 event of default occurs under an approved contract governing  
25 conservation bonds, the holders of conservation bonds or their  
26 authorized representatives, as secured parties, may foreclose or  
27 otherwise enforce the security interest in the conservation investment  
28 assets securing the conservation bonds, subject to the rights of any  
29 third parties holding prior security interests in the conservation  
30 investment assets perfected in the manner provided in this section.  
31 Upon application by the holders (~~of or~~) or their representatives,  
32 without limiting their other remedies, the commission (~~shall~~) must  
33 order the sequestration and payment to the holders or their  
34 representatives of revenues arising with respect to the conservation  
35 investment assets pledged to such holders. Any such order (~~shall~~)  
36 must remain in full force and effect notwithstanding any bankruptcy,  
37 reorganization, or other insolvency proceedings with respect to the  
38 debtor. Any surplus in excess of amounts necessary to pay principal,



1 premium, if any, interest, and expenses arising under the contract  
2 governing the conservation bonds (~~shall~~) must be remitted to the  
3 debtor electrical, gas, wastewater, or water company or the debtor  
4 finance subsidiary.

5 (4) The granting, perfection, and enforcement of security interests  
6 in conservation investment assets to secure conservation bonds is  
7 governed by this chapter rather than by chapter (~~62A.9~~) 62A.9A RCW.

8 (5) A transfer of conservation investment assets by an electrical,  
9 gas, wastewater, or water company to a finance subsidiary, which such  
10 parties have in the governing documentation expressly stated to be a  
11 sale or other absolute transfer, in a transaction approved in an order  
12 issued by the commission and in connection with the issuance by such  
13 finance subsidiary of conservation bonds, (~~shall~~) must be treated as  
14 a true sale, and not as a pledge or other financing, of such  
15 conservation investment assets. According the holders of conservation  
16 bonds a preferred right to revenues of the electrical, gas, wastewater,  
17 or water company, or the provision by such company of other credit  
18 enhancement with respect to conservation bonds, does not impair or  
19 negate the characterization of any such transfer as a true sale.

20 (6) Any successor to an electrical, gas, wastewater, or water  
21 company pursuant to any bankruptcy, reorganization, or other insolvency  
22 proceeding (~~shall~~) must perform and satisfy all obligations of the  
23 company under an approved contract governing conservation bonds, in the  
24 same manner and to the same extent as such company before any such  
25 proceeding, including, without limitation, collecting and paying to the  
26 bondholders or their representatives revenues arising with respect to  
27 the conservation investment assets pledged to secure the conservation  
28 bonds.

29 **Sec. 34.** RCW 36.94.110 and 1967 c 72 s 11 are each amended to read  
30 as follows:

31 After adoption of the sewerage and/or water general plan, all  
32 municipal corporations and private utilities within the plan area  
33 (~~shall~~) must abide by and adhere to the plan for the future  
34 development of their systems. A municipal corporation or private  
35 utility, including a wastewater company as defined in RCW 80.04.010,  
36 may petition for amendments to the plan. Whenever the governing  
37 authority of any county or counties or any municipal corporation deems

1 it to be for the public interest to amend the sewerage and/or water  
2 general plan for such county or counties, notice shall be filed with  
3 the board or boards of county commissioners. Upon such notice, the  
4 board or boards (~~shall~~) must initiate consideration of any amendment  
5 requested relating to the plan and proceed as provided in this chapter  
6 for the adoption of an original plan.

--- END ---